

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARCIE M. PENCE,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
the Social Security Administration,

Defendant.

CASE NO. 12-cv-05492-BHS-JRC

REPORT AND RECOMMENDATION
ON STIPULATED MOTION FOR
REMAND

This matter has been referred to Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4), and as authorized by *Mathews, Secretary of H.E.W. v. Weber*, 423 U.S. 261 (1976). This matter is before the Court on Defendant's Stipulated Motion to Remand Pursuant to Sentence Six, 42 U.S.C. § 405(g). (ECF No. 12.)

After reviewing Defendant's motion and the relevant record, the undersigned recommends that the Court grant Defendant's motion, and remand this matter to the Commissioner, pursuant to sentence six of 42 U.S.C. § 405(g) because the recording of the

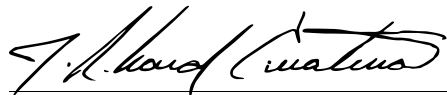
1 hearing held on 4/8/2011 is incomplete and thus good cause exists to support the request for
2 remand. This Court retains jurisdiction of this action pending further administrative development
3 of the record. *See* 42 U.S.C. § 405(g); *see also Shalala v. Schaefer*, 509 U.S. 292, 297-300
4 (1993).

5 On remand, the Appeals Council shall remand the matter to an administrative law judge
6 who shall afford Plaintiff a *de novo* hearing. After remand, the Commissioner of Social Security
7 shall modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or
8 both, and shall file with the Court any such additional or modified findings of fact and decision.
9 42 U.S.C. § 405(g). If the outcome of the *de novo* hearing is not fully favorable to Plaintiff, the
10 Commissioner shall file with the Court a transcript of the additional record and testimony on
11 which the Commissioner's action in modifying or affirming is based. *Id.* In addition, Plaintiff
12 may seek judicial review by reinstating this case rather than by filing a new complaint. If the
13 outcome is favorable to Plaintiff, the parties shall move this Court for entry of Judgment.

14 Given the facts and the stipulated nature of the motion, the Court recommends that the
15 District Judge immediately approve this Report and Recommendation and order the case be
16 **REMANDED** pursuant to sentence six of 42 U.S.C. § 405(g).

17 The case should **NOT BE CLOSED** as this Court retains jurisdiction.

18 Dated this 20th day of August, 2012.

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21 J. Richard Creatura
22 United States Magistrate Judge
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